

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DARIAN DEROSA,

Plaintiff,

Case No. 2:16-cv-01472-LDW-SIL

v.

CAC FINANCIAL CORP.,

Defendant.

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**PLAINTIFF'S STATEMENT OF MATERIAL
FACTS NOT IN DISPUTE PURSUANT TO RULE 56.1(a)**

Plaintiff Darian Derosa (“Plaintiff”), pursuant to Local Civil Rule 56.1, respectfully submits this Statement of Material Facts in support of her Cross-Motion for Summary Judgment against Defendant CAC Financial Corp. (“Defendant”).

1. Plaintiff is a natural person residing in Suffolk County, New York. *See Declaration of Darian Derosa (“Derosa Decl.”), at ¶ 1.*

2. Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3). *See Dkt. 19, at ¶ 6; Derosa Decl., passim.*

3. Defendant is a debt collector as defined by 15 U.S.C. §1692a(6). *See Dkt. 19, at ¶¶ 8-9; Dkt. 20 at ¶¶ 8-9.*

4. In or about May of 2010, Plaintiff opened an ‘R’Us MasterCard credit card account through Synchrony Bank for personal and family use. *Derosa Decl. at ¶ 2.*

5. The credit card accrued interest on any balances carried, late fees on any late or missed payments, and other fees. *Id. at ¶3; see also Exhibit 2 to Derosa Decl., at pp.1-2.*

6. In 2014, Plaintiff began to fall behind on payments owed, and as a result, the balance on the account increased each month due to interest and fees. *Derosa Decl.* at ¶4.

7. At some point, the account was assigned or otherwise transferred from Synchrony Bank to Defendant. *Id.* at ¶ 5-6.

8. In August of 2015, Defendant sent Plaintiff a letter seeking to collect the debt owed to Synchrony (the “August 7 Letter”). *Id.* at ¶ 5; *see also Dkt.* 19, at ¶ 14; *Dkt.* 20 at ¶ 14.

9. A true copy of the August 7 Letter is annexed to the Complaint. *Dkt.* 19, at ¶ 14; *Dkt.* 20 at ¶ 14.

10. CAC Financial did not notify Plaintiff that his account was being sold, referred or otherwise transferred to CAC Financial for collection. *Derosa Decl.* at ¶ 6.

11. The August 7 Letter included a line item stating that the “Amount” of the account was “\$2,863.52.” *Id.* at ¶ 7.

12. The August 7 Letter did not state how the “Amount” was calculated. *Id.* at ¶ 8.

13. The August 7 Letter did not state what portion of the “Amount” was attributable to principal. *Id.*

14. The August 7 Letter did not state what portion of the “Amount” was attributable to interest. *Id.*

15. The August 7 Letter did not state what portion of the “Amount” was attributable to late fees. *Id.*

16. The August 7 Letter did not state what portion of the “Amount” was attributable to other fees. *Id.*

17. The August 7 Letter did not state whether the “Amount” was still subject to interest, late fees, and other fees. *Id.*

18. The August 7 Letter did not state that a payment of the “Amount” would have paid the debt in full. *Id.*

19. Plaintiff’s account was always subject to interest, late fees, and other fees. *Id.* at ¶¶ 3, 4, and 12.

20. Plaintiff was never advised that her credit card would no longer be subject to interest and fees on an open balance, or that the terms of her credit card had been changed. *Id.* at ¶ 11.

21. Plaintiff did not know whether the “Amount” was static, or whether it would increase due to the accumulation of interest, late fees, and other fees, as it always had in the past. *Id.* at ¶ 9.

22. Plaintiff did not know whether if she paid the “amount,” the collector would leave her alone, or whether she would owe additional money for interest or fees accumulated after the date of the letter. *Id.*

23. The credit card agreement annexed to the *Derosa Decl.* as “Exhibit 2” is the agreement applicable to the Plaintiff’s account. *Id.* at ¶ 12; *see also Declaration of David M. Barshay*, at ¶¶ 11-12

Dated: Garden City, New York
December 30, 2016

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